



Reply to  
Attention of:

**DEPARTMENT OF THE ARMY**  
**SOUTHWESTERN DIVISION, CORPS OF ENGINEERS**  
**1100 COMMERCE STREET**  
**DALLAS TX 75242-0216**

CESWD-PDS-O

18 May 2007

MEMORANDUM FOR

Commander, Fort Worth District  
Commander, Galveston District  
Commander, Tulsa District

SUBJECT: Water Quality Certification and Consistency for the Nationwide Permits in Texas

1. References.

a. CESWD-PDS-O memorandum, 16 April 2007, Subject: Interim Procedures and Minimal Adverse Effect Determination for the Nationwide Permit Published in the 12 March 2007 Federal Register (Encl 1).

b. Texas Commission on Environmental Quality (TCEQ) letter, 26 April 2007, Subject: USACE Nationwide Permits (Encl 2).

c. Railroad Commission of Texas (RRC) letter, 10 May 2007, Subject: USACE Nationwide Permits (Encl 3).

d. United States Environmental Protection Agency (EPA) letter, 11 May 2007, Subject: Certification of 2007 Nationwide Permits for use in Indian county in Texas (Encl 4).

2. The purpose of this memorandum is to issue preliminary decisions on the regional conditions for Water Quality Certification (WQC) and the Coastal Zone Management Act consistency determinations (Consistency) for the nationwide permits (NWP) in Texas. As discussed in the 16 April 2007 referenced memorandum, division engineers must issue supplemental decision documents (DDs), which among other things, evaluate regional conditions necessary to ensure that activities authorized by NWP result in no more than minimal individual and cumulative adverse effects on the environment. According to 33 CFR 325.4 and 33 CFR 330, WQC and Consistency are types of regional conditions that require approval of the division engineer. Until these supplemental DD's are completed and the regional conditions are approved for Texas, the Corps districts may proceed with issuance of NWPs in Texas but must prepare interim DDs using the format specified by CECW-OR (Encl 1). During this interim period and prior to completion of the supplemental DDs, I have determined that to expedite permit decisions and provide better service for the public in Texas it is necessary for me to issue decisions on WQC and Consistency.

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3. As the lead district in Texas, Galveston coordinated review of the WQC with the other Corps districts in Texas and the majority of issues were resolved.

a. On 26 April 2007 the TCEQ issued conditional WQC and Consistency with the Texas Coastal Management Program for the NWP's and the proposed regional conditions in Texas (Encl 2). I have reviewed the conditioned WQC and Consistency and find them acceptable with the exception of the conditions placed on NWP 16 and those placed on General Condition 20 of the NWP's. Because I have been advised that the TCEQ condition requiring return water effluent from confined dredged material disposal areas not exceed 300 milligrams/liter of total suspended solids is not reasonably implementable or enforceable, according to 33 CFR 325.4 (c), I must consider WQC for NWP16 denied. Since the general conditions to the NWP's can only be modified by the Chief of Engineers, I cannot comply with TCEQ's request to modify General Condition 20, Mitigation. However, I will consider TCEQ's request for a copy of any written mitigation waiver to applicants as an additional condition to its WQC and Consistency. This will ensure that TCEQ receives copies of mitigation waivers issued by the Corps.

b. On 10 May 2007 the RRC issued conditional WQC and Consistency for the NWP's and proposed regional conditions in Texas that include activities related to exploration, development, and production of oil and gas and geothermal resources, including pipeline transportation (Encl 3). I have reviewed the conditioned WQC and Consistency find them acceptable with the exception of the items mentioned in the previous paragraph.

c. On 11 May 2007, EPA, Region 6 issued conditional certification for the NWP's and proposed regional conditions in Indian country in Texas (Encl 4). Subsequent to the letter, Mr. Tom Nystrom, EPA, confirmed that condition number 7 of EPA's WQC is intended to allow for the placement of cured concrete as fill. Based on this understanding, I find the conditioned certification for Indian country acceptable.

4. For NWP's that WQC or Consistency has been denied, if the Corps determines that a project otherwise meets conditions of the NWP, it may issue a provisional NWP. This requires the applicant to obtain individual WQC from the appropriate agency before proceeding with work under the NWP.

5. Until I have issued supplemental DDs for the NWP's, which will include an evaluation of WQC and Consistency conditions, I have determined that the substantive restrictions in the terms and conditions of the NWP's published in the 12 March 2007 Federal Register, along with the case specific review contained in the interim DDs, will ensure that the NWP's will authorize only activities with minimal individual and cumulative adverse effects on the aquatic environment for the portion of Texas within the Southwestern Division. It is possible that additional information

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might come to light during the preparation of the supplemental DDs that would require me to modify my decision on WQC and Consistency. If that occurs, the reasons will be discussed in the DD.

6. To aid the regulated public, the Districts will immediately post the conditional WQC and Consistency for the NWP in Texas on their webpages.

7. My decision has been coordinated with Regulatory Program staff in the South Pacific Division (SPD). While they initially concur with my decision, the SPD Commander will make an independent determination on WQC approval for the portion of Texas within his jurisdiction.

8. Please direct future correspondence and questions regarding this memorandum to Ms. Vicki Dixon, CESWD-PDS-O, (469) 487-7037 or email: [vicki.g.dixon@swd02.usace.army.mil](mailto:vicki.g.dixon@swd02.usace.army.mil).

Signed

4 Encls

JEFFREY J. DORKO  
Brigadier General, USA  
Commanding

CF: (w/encls)

Commander SPD  
Commander SPA  
CESWF-PER-R  
CESWG-PE-R  
CESWT-RO  
CESPA-OD-R